In Supreme Court of the United States.

October Term, 1880.—No. 190.

HARVEY TERRY,

Appellant.

vs.

JOHN I. McLURE,

Receiver of the Bank of Chester et al., Appellees.

Appeal from the Circuit Court of the United States for the District of South Carolina.

HARVEY TERRY,
Complainant's Attorney.

R. O. Polkinhorn, Printer, Washington, D. C.

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The Bank of Chester is one of the eight Banks chartered by act of the Legislature of South Carolina, ratified December 16th, 1852, for the period of 21 years, from the 1st day of January, 1853 (see 12 Stat., S. C., pp. 212–14), with all the powers and privileges granted to the Planters & Mechanic's Bank, under its charter granted December 20th, 1810 (see 8 Stat., S. C., p. 18), and as amended and renewed December 18th, 1830, to January 1st, 1853 (see 8 Stat., S. C., p. 57), and said Bank of Chester was made subject to all of the restrictions, liabilities or modifications of charter imposed by the Legislature on the Planters & Mechanics' Bank, or that might be imposed by the Legislature on the said Bank of Chester. See act of December 18, 1840, 11 Stat., S. C., p. 100.

The liability of stockholders of the Bank of Chester

reads as follows: "That in case of the failure of said Bank, each stockholder, copartnership or body politic having a share or shares therein at the time of such failure, or who have been interested therein at any time within twelve months previous to such failure or bankruptcy, shall be liable and held bound for any sum not exceeding twice the amount of his, her or their share or subscription." 8 Stat., S. C., p. 20, Sec VII. And this liability is referred to and admitted by the defendant's answer. (Record, p. 17.)

The Bank of Chester organized and commenced the business of Banking about September 1, 1853, and issued its bills, payable to the bearer on demand, to a very large amount, and so continued to do business until February, or March, 1865, when Sherman's Army passed through South Carolina, when its doors were closed and its acknowledged insolvency occurred at that date. See testimony of J. I. McLure, Record, p. 79–80. Testimony I. L. Harris, Teller, pp, 83–4.

On the 13th day of November, 1860, the Legislature passed an act modifying the charter of said Bank of Chester, allowing or authorizing the suspension of specie payment on its outstanding bank bills payable on demand. 12 Statutes, S Carolina, Pa., 735–6. This action of the Legislature was made in pursuance of the policy of the then existing State Government, to aid and assist the Banks of the State in husbanding their resources for the emergency of war, and founded on the reserved rights of the Legislature to alter or amend said Bank's charter at its pleasure. (Act, December 18, 1840, 11 Stat., 100–2.) And in conformity to the will of said Legislature, said Bank did pass a resolution to suspend specie payments November 30, 1860; but continued its general business in all other respects under the sworn statements of solvency made to the Comptroller General of the State until, about March 1st, or May 1st, 1865, when said Bank acknowledged its insolvency by clos-

ing its doors; in the mean time, having paid regular dividends to its stockholders, upon the plea of solvency. (See testimony J. I. McLure, Record, p. 79–80; also, I. L. Harris, Record, p. 83–84, 11 Stat., 101.) And after July, 1861, said Bank of Chester and its stockholders invested said capital and trust fund into $1,000,000 confederate bonds and notes. See testimony I. L. Harris. The outstanding bills in 1865, were $560,000, but this circulation was reduced to $225,000, in 1869, the bills being bought at 20 cents down to 7 cents on the dollar, thus showing a reduction of its circulation of $335,000, between March 1, 1865, and January 1, 1870. See testimony, Record, p. 79. Which redemption of bills of the Bank must have absorbed a great part of the trust fund or capital after the declaration of insolvency by closing of the Bank's doors; thus misappropriating the trust fund of said Bank for the purpose of relieving the stock holders of their personal liability, in lieu of making payment of the debts due, to the creditors of said Bank that existed at the date of its failure or bankruptcy. This waste was in excess of the dividends paid to stockholders from 1860 to 1865.

That on the 13th day of March, 1869, the Legislature passed an act "to enable the Banks to resume business or to place them in liquidation." 14 Stat., p. 212. This act required the Bank of Chester to renew its business on or before December 1st, 1869, or in default thereof, said Bank should forfeit all of its rights and privileges as a banking institution, and was subject to be placed in liquidation. Said Bank of Chester refused to resume business and was placed in liquidation about January 1, 1870, by appointment of John I. McLure, Receiver, and the remaining assets of said Bank distributed to its creditors.

The complainant's bill in this action was filed December 2d, 1870, and subsequently the defendants hereto were served with process, and as unknown defendants were dis-

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ing its doors; in the mean time, having paid regular dividends to its stockholders, upon the plea of solvency. (See testimony J. I. McLure, Record, p. 79–80; also, I. L. Harris, Record, p. 83–84, 11 Stat., 101.) And after July, 1861, said Bank of Chester and its stockholders invested said capital and trust fund into $1,000,000 confederate bonds and notes. See testimony I. L. Harris. The outstanding bills in 1865, were $560,000, but this circulation was reduced to $225,000, in 1869, the bills being bought at 20 cents down to 7 cents on the dollar, thus showing a reduction of its circulation of $335,000, between March 1, 1865, and January 1, 1870. See testimony, Record, p. 79. Which redemption of bills of the Bank must have absorbed a great part of the trust fund or capital after the declaration of insolvency by closing of the Bank's doors; thus misappropriating the trust fund of said Bank for the purpose of relieving the stock holders of their personal liability, in lieu of making payment of the debts due, to the creditors of said Bank that existed at the date of its failure or bankruptcy. This waste was in excess of the dividends paid to stockholders from 1860 to 1865.

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The complainant's bill in this action was filed December 2d, 1870, and subsequently the defendants hereto were served with process, and as unknown defendants were dis-

covered by subsequent proceedings, they were made parties to this bill and brought into court.

Upon taking testimony of discovery of the defendants, who had been officers and directors of said bank in July, 1877, it was discovered that the directors of the bank had regularly and continuously declared dividends to their stockholders, after the suspension of specie payments, until bankruptcy (as they term it) in 1865; whereupon the complainant filed his amended bill, on the 6th day of May, 1878, to his former amended bill filed May 14th, 1875, to his original bill filed December 2d, 1870—charging that said Bank of Chester failed and became bankrupt on the 29th day of November, 1860, when said bank passed its resolution to suspend specie payments; that said bank, at that date, had a paid-up capital of $300,000 and good assets amounting to $700,000; and, notwithstanding the failure of said bank, both said corporation and its stockholders positively denied said failure; and, by *usurpation of said franchise, and in fraud of the rights of its creditors, continued to use said franchise and to parcel out to its stockholders the capital and assets of said bank amongst themselves, which, at that date, was a trust fund belonging to the creditors of said bank and this complainant, without first making payment of the debts of the corporation* to its creditors. That the stockholders aided and participated in said usurpation; and demanded, received, used and converted to their own use, parts and parcels of said capital, assets and trust-fund that legally belong to this complainant and other creditors; and said stockholders are now holders of said trust-fund, as trustees, for the creditors of said bank, &c., &c. That said stockholders, in fraud of the rights of complainant and other creditors, concealed the fact of the failure of said bank, and continued, by their officers and agents, and by their own assistance, acts and authority, to use, dispose of, apply and disburse said trust-fund to their

own use and possession; and have so continued to use and possess said fund as a continuing trust until the present date, &c., &c.—which said fraud was not discovered until disclosed by the testimony taken in this cause, &c. Then follows the allegation that the defendants named held shares, &c. Record, 89–90.

Notwithstanding this amendment, regularly filed May 6th, 1878, yet the defendants immediately came into court, on the same day, and pressed the cause for trial—and are now here to answer this appeal.

Trial of the Cause.

On hearing the pleadings, testimony and argument of counsel in this case, it is ordered and decreed that the plea of the statute of limitations be sustained, and the bill be dismissed, with costs, to be taxed by the clerk of the court, and that the defendants have execution for the same.

Appeal.

1st. That by a decree dated May 6th, 1878, in the above-stated cause, judgment was ordered to be entered against the complainant, and the costs taxed in the cause. 2d. That the amount in said suit exceeds ten thousand dollars. 3d. That said decree, as your petitioner is advised, is erroneous, and ought to be reversed. 4th. Your petitioner humbly prays that he may be allowed an appeal from all parts of the proceeding had in said cause, and from said decree.

Assignment of Error.

That the court erred in dismissing the bill on the ground that the statute of limitations applied to bar said right of action in four years to recover said trust fund, wrongfully or fraudulently appropriated by the defendants; whereas the court should have ordered an account of proof of the

to the creditors by the stockholders

debts due and an accounting of the fund appropriated after the failure of the bank.

Argument.

1st. The defendants admitted all the facts charged in the amended bill, and all of the proofs made in the cause by their waiver to answer or demur to the amendments filed, when they insisted on an immediate trial after the said amendment filed May 6th.

Code of South Carolina, p. 605, sec. 169–171.

U. S. Supreme Court Rules of Practice have the force of a statute.

1 Abbott's U. S. Pract., 257;

Abbott's U. S. Court Pract., 135, Rule 18.

2d. Bank failed November 29th, 1860, at the date it suspended specie payments.

This ruling has been held in two cases in this court in two former suits, where the banks suspended in South Carolina at the same date and under the same circumstances.

92 U. S., 510: *Carroll* vs. *Green*;

97 U. S., 171: *Godfrey* vs. *Terry*

The amended bill charges the failure to have occurred November 29th, 1860 (Record, p. 91), and, by the action of the defendants, it is admitted that the bank had capital and assets of $1,000,000 at that date. (Record, p. 91.) The defendants proceed to trial without answer or demurrer to the amendment, and, therefore, the amended bill stands as though actually proved.

Banks assets a trust fund for the benefit of creditors, which may be followed into the hands of stockholders receiving it before the corporate debts are paid.

This question has been so well settled by this court that it scarcely needs argument.

17 Wallace, 610: *Sawyer* vs. *Hogg*;

Thompson on Liability of Stockholders, Secs. 3, 10, 13, 14, 18;
3 Mason, 313: *Wood* vs. *Dummer*;
2 Story's Eq'ty Jurisp., § 1252, and authorities;
2 Do. Do. Do., § *a* 1252, and authorities;
Perry on Trusts, § 181, 182, 207, 211, 212, 241-2;
19 Johnson, N. Y., 456: *Slee* vs. *Bloom*;
44 New York, 42: *Cromwell* vs. *B'klyn F. Ins. Co.*;
8 Peters, 281: *Mumma* vs. *Potomac Comp'y.*
3 Howard, U. S. 333-401: *Oliver* vs. *Piatt*;
15 Howard, 304: *Curran* vs. *State of Ark.*;
7 Wallace, 393: *R. R. Co.* vs. *Howard*;
7 Paige Chy., 199: *Scott* vs. *Eagle Fire Ins. Co.*;
6 Paige Chy., 337: *Reed* vs. *Bank of Newburgh*;
56 N. Hampshire, 271: *Currier* vs. *Slate Co. opinion*;
57 Pennsylvania, 202: *Nat. Bank* vs. *King*;
4 B. Monroe, 178: *Gratz* vs. *Red Opin.*;
Thompson's liability of officers and agents of Corp., page 453, S. 17;
8 Georgia, 486: *Hightower* vs. *Thornton*;
8 Georgia, 502: *Hightower* vs. *Thornton*;
99 U. S. Opin., 570-3: *McBurney* vs. *Carson*;
Biglow on Fraud, 447-8.

Shareholders are conclusively charged with notice of the trust, character of capital, and assets of the corporation; they are *prives* to the trust, and if by any means, they become possessed of this trust fund, after failure or bankruptcy, they hold it subject to all equities of the creditors, and equity will compel them to account to creditors for the fund so received or disposed of.

Thompson's liability of Stockholders, S. 7, S. 9;
11 Georgia, 556, 569: *Colquit* vs. *Howard*;
16 Ohio State, 599: *Medill* vs. *Collier*;
20 Vermont, 444: *Whitwell* vs. *Warner*;
2 Story's Equity Jurisp., S. 1257-8.

Each director and stockholder of said bank was an integral part of the corporation at the date of its failure, and each director and stockholder that participated, aided, and assisted in using, paying out, and dividing up as dividends, or appropriating or holding to his own use, any part of said capital trust fund of said bank after its failure, are as much bound to the creditors of said corporation, to the extent of the fund so received and used, as the corporation was liable.

They appropriated the fund after the bank's failure. They divided, and each personally received a part of the trust fund after the bank's failure, well knowing its circumstances and condition, and now hold the same to the use of the creditors.

A court of equity and good conscience cannot sit idly by and allow a trust fund of $1,000,000, dedicated by law to secure the public from loss, used, divided up amongst and appropriated by those persons, who were bound, both in law and equity, to have paid said fund to the creditors of the corporation.

The amended bill alleges assets of $1,000,000. Record, pages 91–2.

Thompson's Liability of Corporate Agents, page 39;
17 Wallace, 610: *Sawyer* vs. *Hoag;*
7 Wallace, 392–409: *R. R. Company* vs. *Howard.*

Trust fund divided out and distributed to stockholders in fraud of creditors not subject to statute of limitations. See Statute of Limitations in South Carolina.

2 Stat., 585, Sec. VI;
Perry on Trusts, § 840, 229, 230, 865;
Farr vs. *Farr*, 1 Hill's Chancery S. Carolina, 391;
Michond vs. *Girod*, 4 Howard U. S. Opin., 560–1.
Prevost vs. *Gratz*, 6 Wheaton, 481;
Brown vs. *Brown*, 1 Strobhart's Eq'ty Opin., 370;
14 United States Statutes, 533, Sec. XXXIII;

Glenny vs. *Langdon*, 98 U. S., 20;
McBurney vs. *Carson*, 99 U. S. Opin., 570–3;
Young vs. *Bradley*, 101 U. S., 784.

Complainant was under disability to sue before July, 1868, by reason of stay laws of the State (13 Stat., 16, Sec. V; 13 Stat., 146; 13 Stat. 235; 13 Stat., 285) and the military stays, (14 Stat., 87, No. 41.)

Ward vs. *Bakhelan*, 1 Paige Chy., 100;
Farr vs. *Farr*, 1 Hill's Chy. S. C., 391;
Prevost vs. *Gratz*, 6 Wheaton, 481;

At most, the Statute of Limitations runs only from the discovery of the fraud, and this discovery of the fraud was first known by the testimony of defendants, taken July 25th, 1877.

Eigelberger vs. *Hibler*, 1 Hill's Chy. S. C., 121;
Prevost vs. *Hubbell*, 1 Hill's Chy. (S. C.) Opin., 214;
Harrell vs. *Kelly*, 2 McCord's S. C. Law Opin., 428.

The president of the bank in charge shows an outstanding circulation of bills of $560,000 when the bank closed its doors in 1865, (record, page 79–4th), and that said outstanding circulation was reduced to $225,000, December 1, 1869, at the date the bank was required to resume business by the act of March 13th, 1869.

14 Stat., 212.

Here is shown a reduction of $335,000 of circulation after the bank closed its doors, and an expenditure of the trust fund necessary to accomplish that purpose, the object being to relieve the stockholders from their personal liability. This is the sworn testimony in the case. (Record, pages 79, 80; testimony of J. J. McLure; testimony of Jas. Hemphill, page 78½; testimony of S. W. Mobley, page 81. See testimony of John L. Harris, teller of the bank.) They continued to collect the debts due to the bank until October or November, 1865, when he left; and he turned the

money over to the president of the bank. The bank divided dividends to its stockholders from 1860 to 1865. Record, pages 83–4.

This case shows that the Bank of Chester failed November 29, 1860, with a large circulation of its bills outstanding. That after suspending specie payment, in 1860, yet it continued its regular business until March or May, 1865, paying dividends to its stockholders, &c., as though no failure had occurred.

And when the final collapse came, in 1865, (when the Bank could no longer do business on a paper basis), the Bank and its officers went on so far as to buy up, and redeem in some way, $335,000, of the outstanding indebtedness of the Bank; without first appropriating the trust fund to the payment of the creditors generally; and this use of the Bank's fund, was made for the purpose of protecting its stockholders from their personal liability, (testimony of Jas. Hemphill, a director. Record, page 78; testimony of J. J. McLure, President *p. t.*, page 79–80).

This testimony, being true, and the facts set forth in the amended bill of May 6, 1878, being true, these defendants therein named ought to render an accounting before the Circuit Court of the United States, for the District of South Carolina, for the moneys had, received, or appropriated, belonging to Bank of Chester, and to the creditors of the Bank of Chester, after the date of its failure, November 29, 1860.

HARVEY TERRY,
Complainant's Attorney.

OFFICE SUPREME COURT U. S.
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THE SUPREME COURT

OF THE

UNITED STATES.

HARVEY TERRY,

vs.

JOHN J. McLURE, RECEIVER OF THE BANK OF CHESTER, ET. AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA. 1

ARGUMENT FOR CERTAIN STOCKHOLDERS BY EDWARD McCRADY, JR.

2

This is a bill by a creditor to enforce the liability of the stockholders of the Bank of Chester, South Carolina, under the provisions of an Act of the Legislature of South Carolina, of the 16th December, 1852, which has already been under the consideration of this Court in the case of *Carrol vs. Green*, *92 U. S., 510.*

The defendants, Giles J. Patterson, Robert N. Hemphill, Samuel McAliley, William McCandless, Robert S. Hope, Alexander Walker, James M. McDaniel, Susan J. Springs, J. Harvey Smith, W. T. Robison, Rudolph Brandt, William 3

Stringfellow, John S. Bratton, P. B. Gaston, William A. Walker, Phineas Pierce, Robert W. Brice, J. Leslie Wright, S. Y. Tupper, Agnes C. Mitchell, William E. Adams, Robert Mills, James W. Kee and John Cairns, were served with subpœnas in this case, on several days, between the 14th and 30th October, 1875. (*Transcript Record, p. 26, f. 29.*)

On examining the bill to which they were thus subpœnaed to answer, and which bill had been filed long before, it was
4 found to contain no allegation whatsoever connecting any of them with the case, and, thereupon, 30th November, 1875, on motion of Messrs. McCrady & Son, their solicitors, it was adjudged that the issuing of the writs of subpœna to them was irregular, and the service upon them void, and the said parties were dismissed with their costs. (*Transcript Record, p. 28, f. 32.*)

On the 8th December, 1878, the complainant filed "a petition for review" of this order, which petition was on the 14th December, 1875, dismissed by their Honors, Judges Bond
5 and Bryan. (*Transcript Record p. 36, f. 104.*)

On the 6th March, 1876, the plaintiff obtained an order to amend the bill, whereby the parties above named were made parties to the original bill, upon allegations connecting them therewith. (*Transcript Record, p. 41, f. 118.*)

The record does not show when they were served, but on the 5th June, 1876, they entered appearances. *Transcript Record, p. 43, f. 124.*)

In the case of *Carrol vs. Green, 92 U. S., p. 310*, this Court held that the liability of the stockholders in a similar case, arose
6 upon the failure of the Bank, the date of which was fixed by the Master in that case as of the 1st February, 1865, and after considering the interruptions which had occurred in the running of the Statute, the Court held, that in any view of the facts that can be taken, more than four years, (the limit of the Statute) elapsed after the Statute began to run before the suit was instituted, and in which case the bill had been filed and the subpœnas issued on the 18th June, 1872.

See also. *Godfrey vs. Terry, 97 U. S., p. 171.*

7 This case is relieved of the question in the two cases just cited, viz: that, as to the date of the failure of the Bank for

the original bill and amended bill both fix it as prior to the 1st of March, 1865. The allegation is, "and your orator further sheweth unto your Honor, *that on the first day of March, A. D., 1865, and indeed at an earlier date the said Bank had failed.*" (*Transcript Record, p. 2, f. 7; p. 12, f. 37.*)

The rule in this Court is, that if new parties are made by amending a bill in Equity, the Statute of Limitation does not cease to run in their favor until they are thus made parties. In *Miller vs. McIntyre, 6 Peters, 61*, Mr. Justice McLean in 8
delivering the opinion of the Court, says:

"Until the defendants were made parties to the bill the suit cannot be considered as having been commenced against them. It would be a novel and unjust principle to make the defendants responsible for a proceeding of which they had no notice, and where a final decree in the case could not have prejudiced their rights."

See also, *Holmes vs. Trout, 7 Peters, 171.*
Angel Limitation, § 330.

"But an amended bill making new parties has no relation to the commencement of the suit, for purposes of the Statute, and the Statute will avail them at the period when they were made defendants. Until the defendants are made parties to the bill 9
the suit cannot be considered as having been commenced against them."

It appears therefore upon the face of the bill (original and amended,) that the Statute of Limitations (four years) had run out and barred the action as against these defendants before they were made parties, and under the rulings of this Court in the cases of *Rhode Island vs. Massachusetts, 15 Peters, 233*, and *Maxwell vs. Kennedy, 8 Howard, 210*, they demurred, and their demurrer was sustained.

In the very recent case of *National Bank vs Carpenter, 101 U. S., 568*, this Court reiterates the rule. 10

Mr. Justice Swayne delivering the opinion of the Court says:

"It appears on the face of the bill that the case which it makes is barred by the Statute of Limitations, and that the excuse of concealment "of the cause of action" by the defendants is not so alleged as to avail the complainants. This defect can be taken advantage of by demurrer. *Rhode Island vs Massachusetts, 15 Peters, 233. Maxwell vs. Kennedy, 8 How. 210* The objection of laches is also fatally apparent. *Brown vs, County of Buena Vista, 95 U. S., 157, Duncan vs. Lyon, 3 Johns N. Y., Ch. 357.* The demurrers of the defendants were therefore rightly sustained and the bill was properly dismissed." 11

EDWARD McCRADY, Jun.

The defendant James S. Gibbes, who was served with subpœna on the 14th October, 1875, (*Transcript Record, p. 27, f. 80,*) and who united with the defendants above named in their defence, and who demurred to the bill, and whose demurrer was likewise sustained, (*Transcript Record, p. 66, f. 192,*) unites in the foregoing brief.

12

THEODORE G. BARKER,
Attorney for J. S. Gibbes.

IN THE SUPREME COURT

—OF THE—

UNITED STATES.

OCTOBER TERM, 1880.

Appeal from the Circuit Court of the United States for the District of South Carolina.

HARVEY TERRY, *Appellant,*

vs.

JOHN J. McLURE, Receiver of the Bank of Chester, *et al.*

POINTS AND AUTHORITIES.

JAMES H. RION, *Solicitor,*
for McLure, Receiver, and divers other Defendants.

COLUMBIA, S. C.
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JAMES H. RION, *for McLure, Receiver, and divers other Defendants.*

STATEMENT.

On the 2d of December, 1870, Appellant filed a Bill against the Receiver and the Officers of the Bank, praying a *discovery* from them as to who were the stockholders, and writs of subpœna against "the stockholders when they shall have been discovered" (fol. 16). 1

The Receiver and officers filed demurrer and pleas on the 29th of April, 1871—among which pleas was the four years' Statute of Limitations (fol. 26).

No decision was ever had upon the issues thus made; but on the 14th of May, 1875, Judge Bond granted order for the Complainant to amend upon payment of all costs to date (fol. 31). 2

The *amended* Bill was filed on the 14th of May, 1875, and was against the same parties and others *as stockholders* (fols. 41, 42).

3 On the 10th of June, 1875, I filed Answers for all these Defendants (fol. 67), setting up the four years' Statute of Limitations (fol. 62) and other defences.

From time to time other stockholders were subsequently made parties, for whom I filed Answers as above stated.

On the 6th of March, 1876, (fol. 118,) the Complainant was allowed to file amendments upon copies being served upon me.

To the amended-amended Bill, I filed Answers on the 16th of August, 1876, (fol. 141,) for James Hemphill, and divers other stockholders (fol. 155), for all, as before, formally pleading the
4 four years' Statute of Limitations by way of Answer (fol. 150, page 53).

Divers other stockholders named in the amended-amended Bill, were defended by other Solicitors.

On the 1st of May, 1878, the Complainant filed a Petition for leave to again amend his amended-amended Bill (fol. 142) as set forth in fol. 253, *et seq.*

No action was ever had upon this Petition, and no leave was granted to file this new amendment, nor were any of my clients or myself served with the amendments, which for the first time
5 I see in the printed paper book.

This amended-amended-amended Bill, however, is on the files of the Court, with the Record, and being sworn to by Mr. Terry, (who alone has conducted the suit,) serves as

EVIDENCE—

"That on the 29th day of November, 1860, said Bank of Chester suspended the payment of its debts in specie, failed and became bankrupt, and never thereafter resumed the payments of
6 its circulating bank notes, according to the terms of its charter, and in consequence of said failure * * * * * " (fol. 259).

All the Bills allege "that on the first day of March A. D. 1865, and indeed at *an earlier date*, the said Bank had failed" (fols. 7, 37); and all my Answers admit this allegation, in the following words: "That he admits at *an earlier date* than the first day of March eighteen hundred and sixty-five the said Bank of Chester had failed, being then indebted to an amount far exceeding its assets" (fol. 144).

The testimony of witnesses examined, all fix the *suspension* of specie payments in *November, 1860.* 7

On the 13th of November, 1860, the Legislature of South Carolina passed an Act legalizing the suspension of specie payments by the Banks of the State (XII. Stats., 860, Sec. 2,) until 1st January, 1862. (Only releasing penalty to State)

This Act was continued of force from time to time, until on the 17th of December, 1863, it was made of force "until the close of the war between the Confederate States and the United States of America, and for one year thereafter" (XIII. Stats., 191). 8

The testimony of J. L. Harris, Teller, was that the Bank "had actually suspended when the Act was passed" (fol. 236). This was in November, 1860, (fol. 237). From and after 1860, the Bank "dealt in Bills of the Bank of the State, and other Banks, and from the time Confederate currency was issued, exclusively in Confederate currency" (fol. 238). Confederate money was issued in July, 1861, (fol. 239).

On the 6th of May, 1878, upon a hearing upon the merits, his Honor Judge Bond sustained the plea of the Statute of Limitations (fol. 289). 9

Where the Statute had been set up as a defence by way of demurrer, his Honor Judge Bond had previously on the 19th of December, 1876, sustained the demurrer and ordered the Bill dismissed (fols. 190 to 195).

POINTS AND AUTHORITIES.

I. The suspension of specie payments prior to the 13th of November, 1860, was a *failure* within the meaning of the charter of the Bank. 10

Godfrey vs. Terry, 97 U. S. (7 Otto), 171.

In *Terry vs. Calhan et al.*, the Supreme Court of South Carolina, at November Term, 1878, made exactly the same decision in the case of the Commercial Bank, in which the charter of the Bank and the evidence were the same as in this case. [Certified Manuscript copy submitted, to be reported in 13 So. Ca.]

11 II. The plea of the Statute of Limitations was a bar to the action.

Godfrey vs. Terry, supra.
Carroll et al. vs. Green et al., 92 U. S. (2 Otto), 509.

III. Even take the date of filing the Bill for *discovery*, 2d December, 1870, there intervenes over 10 years from the 13th of November, 1860. From this take the suspension of the Statute of Limitations, from the 22d of December, 1861, to the 22d of December, 1866, five years: and we have five years, or over the full statutory bar.